

STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION

TRIPLE LOCATION, LLC  
D/B/A CLUB O  
17032-40 S. HALSTED STREET  
HARVEY, IL 60426

Case No.: 20 APP 22

Appellant,

ORDER

vs.

HARVEY LIQUOR CONTROL  
COMMISSION

Appellee.

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “State Commission”) upon the appeal of Triple Location, LLC., Appellant (hereinafter “Club O”), the Commission being otherwise fully informed, and a majority of its members do hereby state the following:

Procedural History

Club O is an applicant for the renewal of a liquor license at 17032-40 S. Halsted Street, Harvey, Illinois. The Harvey Liquor Control Commission (hereinafter “Harvey Commission”) previously issued a Class A liquor license to Club O at 17032-40 S. Halsted Street in Harvey which expired on October 31, 2019. Club O attempted to renew the Class A liquor license for the term November 1, 2019, through October 31, 2020, which was denied on March 5, 2020.<sup>1</sup> Club O also attempted to renew the Class A liquor license related to this appeal for the term November 1, 2020, through October 31, 2021. On November 13, 2020, the Harvey Commission served a Notice of Hearing on Club O to appear at a November 20, 2022, hearing related to the renewal of the 2020-2021 license term. The Harvey Commission held a hearing on November 20, 2020, and issued an original order denying the renewal of the Club O 2020-2021 Class A liquor license on December 4, 2022. This original order was later amended on February 9, 2022. Club O filed an appeal with the State Commission upon receipt of the original order on December 21, 2020. After multiple

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<sup>1</sup> Business open on pending appeal pursuant to State Commission appeal number 20 APP 03.

status calls, the State Commission represented by Commissioner Brian Sullivan held an *on the record* hearing on the matter on July 19, 2022. The State Commission as a whole reviewed the entire record and deliberated on the matter at the September 21, 2022, State Commission meeting.

### Decision

Upon review of the record of the Harvey Commission, the State Commission AFFIRMS the order of the Harvey Commission to deny the renewal of Club O's Class A liquor license for the 2020-2021 renewal year.

### Discussion

Section 7-9 of the Liquor Control Act of 1934 places the statutory responsibility to hear appeals from final orders entered by local liquor commissioners on the Commission. *235 ILCS 5/7-9*. If the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of an order to be conducted on the record, the Commission will conduct an *on the record* review of the official record of proceedings before the Local Liquor Commission. *Id.* The Commission may only review the evidence found in the official record. *Id.* The City of Harvey has adopted a local ordinance requiring any appeal from an order of the Harvey Liquor Commissioner to be a review of the official record. *Harvey Ordinances, Section 5-06-210(B)*. Accordingly, the Commission will only review the evidence as found in the official record.

In reviewing the propriety of the order or action of the local liquor control commissioner, the Illinois Liquor Control Commission shall consider the following questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;
- (c) Whether the findings are supported by substantial evidence in the light of the whole record.

*235 ILCS 5/7-9.*

The Illinois Appellate Court has provided guidance that this Commission's duty is to determine whether local agency abused its discretion. *Koehler v. Illinois Liquor Control Comm'n*,

405 Ill. App. 3d 1071, 1080, (2<sup>nd</sup> Dist. 2010). “Such review mandated assessment of the discretion used by the local authority, stating that “[t]he functions of the State commission, then, in conducting a review on the record of license suspension proceedings before a local liquor control commissioner is to consider whether the local commissioner committed an abuse of discretion.” *Id.*

**A. Whether the local liquor control commissioner has proceeded in the manner provided by law.**

The Harvey Commission ruled according to law in providing Club O with the necessary fair and legal process to defend against the license charges levied against Club O. In reviewing the actions of a local liquor commission, the State Commission must review whether the local liquor commission offered appropriate legal processes, offered the licensee the opportunity to prepare a defense, and relied upon established law in arriving at its decision to refuse to renew the license.

Upon a review of the record in this case, the Harvey Commission offered Club O appropriate legal process. The record demonstrates that the Harvey Commission provided Club O with significant amount of time to prepare for the renewal of its license. As early as August 5, 2020, the Harvey Commission mailed the renewal applications to all of its liquor license holders with a renewal deadline of October 2, 2020. *ILCC p. 222*. The August 5, 2020, renewal notice offered additional assistance to the renewal applicant willing to pay an extra fee. *Id.* On November 13, 2020, the Harvey Commission provided Club O with Notice of Hearing for Intent to Not Renew (“Notice of Hearing”), for a hearing scheduled a week later on November 20, 2020. *ILCC p. 001-003*. The notice period was within the statutory 3-day requirement of the Liquor Control Act. 235 *ILCS 5/7-5*. The Notice of Hearing expressly notified Club O that the Harvey Commission would “hear evidence and take testimony concerning facts and circumstances” related to the failure to provide a certificate of insurance related to workers compensation, circumstances involving Club O’s operation of a sexually oriented business, and “[s]uch other and further matters as may be relevant to the renewal of the License.” *ILCC, p. 001*. Therefore, the Notice of Hearing specified:

1. The Harvey Commission would examine facts related to the businesses sexually oriented business;
2. The Harvey Commission would examine any fact “relevant to the renewal of the License.”

The final Amended Order ultimately relied on three reasons for the denial of the Club O license renewal.<sup>2</sup> *ILCC pp. 441-448*. After a hearing, the Harvey Commission ruled that facts adduced at the hearing found: 1. Club O's manager Asa Powell had a disqualifying criminal history because he had committed a felony in 1992; 2. Club O had failed to disclose another manager Kenny Thomas in the renewal documentation; 3. Club O had previously operated in violation a sexually oriented business ordinance by permitting "all nude" dancers in violation of Section 5-105-080 (referenced in the Order prior to Ordinance renumbering as Section 16-96-230). For the second and third bases for denial, while it is true that the Harvey Commission did not expressly charge these violations prior to the hearing, the facts for such violations were discovered at the hearing upon the testimony of the licensed owner. The licensee was represented by counsel at the hearing and counsel was permitted to cross-examine the owner to further explain any fact that may have led to an uncharged violation. Ideally, the Harvey Commission would have amended Notice of Hearing during the hearing to include additional charges based on the testimony heard at the hearing, but it is difficult to determine how the testimony of the licensed owner would have changed had there been an express, on the spot, alteration of the charges.

Local liquor control commissioners are granted wide discretion to suspend, revoke, or refuse to renew a license pursuant to a hearing and for good cause. A local liquor control commissioner has "the power to deny a license for genuine reasons related to the public health, safety and morals. *Ace Produce, Inc. v. State Liquor Control Com.*, 93 Ill. App. 3d 381, 384 (5<sup>th</sup> Dist. 1981) The decision to deny the renewal of a license is tantamount to revoking a license requiring the local liquor control commission to hold a hearing prior to any determination that the license holder has not met the qualifications of its license. *Wyoming v. Liquor Control Com.*, 48 Ill. App. 3d 404 (3<sup>rd</sup> Dist. 1977). Even though a local liquor control commissioner cannot exercise "unbridled discretion" to deny a license without a hearing, the commissioner is still "given broad discretion" to deny a license for good cause "because the decision of whether an applicant should be granted a license poses a question of local concern that may have a substantial impact on the public's health and welfare." *Ace Produce v. State Liquor Control Com.*, 93 Ill. App. 3<sup>rd</sup> at 385.

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<sup>2</sup> In the original December 4, 2020, Order and Decision of the Local Liquor Control Commissioner, the Harvey Commission cited Club O with failure to hold a sexually oriented business permit and for operating a sexually oriented business within 500 feet of a residential zone. Such violations were withdrawn in the Amended Order. Furthermore, the Amended Order did not include a violation for Club O's failure to provide proof of Worker's Compensation insurance which Club O submitted by the extended deadline of November 30, 2020.

In this case, the record does not indicate the Harvey Commission investigated whether Club O failed to disclose one of its managers and had operated as a fully nude “gentlemen’s club” in violation of local ordinance. In fact, the nature of a license renewal is for a local commissioner to presume the licensee is abiding by all laws until otherwise proven. Only after the Harvey Commission held a hearing to determine if Club O had been violating sexually oriented business permitting and zoning laws was it revealed that Club O had *other violations* related to the operation of the sexually oriented business and the failure to disclose a business manager. Until the facts were revealed at the license renewal hearing about undisclosed manager Kenny Thomas, and that Club O operated a “fully nude” “gentlemen’s club,” the Harvey Commission could not have expressly charged the violations. Once such facts were established, the Harvey Commission could not ignore holding Club O accountable for the violations even though the violations were not expressly charged in the Notice of Hearing. Even without such express notification, the licensee was still on notice that they were required to comply with all federal, state, and local laws pertaining to the operation of the business (*Harvey Code, Section 5-06-090*). Moreover, the Harvey Commission put Club O on notice in the Notice of Hearing that the November 20, 2020, renewal hearing would examine “[s]uch other and further matters as may be relevant to the renewal of the License.” *ILCC p. 001*. Therefore, Club O had sufficient notice of its legal operational requirements of the liquor license and was on notice that “further matters” related to license renewal would be examined at the hearing.

Within the Harvey Commission’s broad discretion as local liquor control commission to regulate liquor licenses to protect the health and safety of the community, the Harvey Commission acted according to law in this matter.

#### **B. Whether the order is supported by the findings;**

The Harvey Commission’s order to refuse to renew Club O’s liquor license is supported by the findings because the Harvey Commission did not act arbitrarily or unreasonably, nor did it abuse its decision in not renewing the Club O license. In reviewing whether the order is supported by the findings, this Commission will analyze whether the findings contained within the order constitute grounds to deny the renewal of the license. The Illinois Appellate Court has ruled that, as a reviewing body, the issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the

circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute. *Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago*, 277 Ill. App. 3d 959, 966, (1<sup>st</sup> Dist. 1996).

In this case, the Harvey Commission decision not to renew the Club O license is reasonable based on the entirety of the evidence reviewed by the Harvey Commission. Admittedly, while many of the potential violations or charges against Club O were ultimately withdrawn or dismissed, the Harvey Commission did find Club O to have committed violations related to the operation of a fully nude strip club in violation of local ordinance, the failure to disclose a day-to-day manager of the business, and the hiring of an ineligible manager who had committed a disqualifying felony. Per the Amended Order, the Harvey Commission found sufficient evidence to find that Club O had previously violated Section 5-105-080 (renumbered from Section 16-96-230) of the Harvey Code by allowing dancers to perform without any clothes or “fully nude.” *ILCC* p. 444. The Harvey Commission further found that Club O failed to identify Kenny Thomas as an additional, and possibly only, on-site manager. *ILCC* p. 445. Because on-site managers must qualify in the same capacity as the licensed owner as required by State law [235 ILCS 5/6-2(a)(11)], it is imperative that license holders disclose all persons who manage the business so that they can pass a criminal background check. Plus, the failure to disclose Mr. Thomas means that Club O failed to submit a completed renewal application by the October 2, 2020, renewal deadline. Perhaps if Club O availed themselves of the Harvey Commission offer of assistance with the application, there would have been full and timely disclosure of Kenny Thomas. Finally, the Harvey Commission found Club O to be ineligible for a license because manager/promoter Asa Powell, a key component of the Club O business, was ineligible for a liquor license due to a prior felony conviction. *Id.* While the State Commission in a parallel appellate matter (20 APP 03) has determined that Mr. Powell has been rehabilitated of his prior offense and no longer is ineligible to hold a license, this does not change the fact that, for many years, Club O hired Mr. Powell as a manager/promoter while he was ineligible for a license contrary to both State and local law. Therefore, even though the Harvey Commission decision to deny Club O’s license renewal may seem drastic, the record herein does not indicate that the Harvey Commission made a baseless or arbitrary decision.

For the above stated reasons, the Harvey Commission decision to deny license renewal to Club O is not an abuse of discretion and is supported by the findings.

**C. Whether the findings are supported by substantial evidence in the light of the whole record.**

The Harvey Commission issued findings supported by substantial evidence in light of the whole record. Upon review, an agency's findings of fact are held to be prima facie true and correct, and they must be affirmed unless the court concludes that they are against the manifest weight of the evidence.” *Daley v. El Flanboyen Corp.*, 321 Ill. App. 3d 68, 71, (1<sup>st</sup> Dist. 2001). A finding is “against the manifest weight of the evidence only if an opposite conclusion is clearly evident from the record.” *Vino Fino Liquors, Inc v. License Appeal Com’n of the City of Chicago*, 394 Ill.App.3d 516, 522 (1<sup>st</sup> Dist. 2009). In this case, the Harvey Commission substantiated its refusal to renew the Class A liquor license by providing evidence that Club O violated Section 5-105-080 (previously 16-96-230) and Section 5-06-090 of the Harvey Municipal Code and failed to demonstrate that a license manager, Kenny Thomas, possessed the qualifications to hold a liquor license as required by 235 ILCS 5/6-2(a)(11).

The Harvey Municipal Code expressly prohibits “live nudity” at sexually oriented businesses.” *Harvey Municipal Code 5-105-080 (previously 16-96-230)*. A “sexually oriented business” is “an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor, sexual encounter establishment, escort agency or semi-nude model studio.” *Harvey Municipal Code 5-105-020(J)*. Adult cabaret” means:

A nightclub, bar, restaurant, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly feature (a) persons who appear semi-nude or in a state of semi-nudity; (b) pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified anatomical areas.

*Harvey Municipal Code 5-105-020(A)(3)*.

Nudity is

- (a) the appearance of human bare buttocks, anus, male genitals, female genitals, or the areola or nipple of the female breast; or
- (b) a state of dress which fails to opaquely and fully cover a human buttocks, anus,

male or female genitals, pubic region or areola or nipple of the female breast.

*Harvey Municipal Code 5-105-020(F)*

The local record contains sufficient evidence to demonstrate Club O violated local ordinances by permitting dancers to perform without any clothes, in a “live nude” state. The following testimony by Club O owner, Deborah Diaz, provides the substantial evidence necessary to prove an ordinance violation:

COMMISSIONER CLARK:· Okay.· So prior to today, if I came -- if I decided that I wanted to pay a visit to Club O, a gentlemen's club, nightclub, restaurant, and adult entertainment establishment, are you saying to me -- you testified, I want to make sure this is correct, that prior to today I would have saw only females with pasties and only females covering their genitalia?,

MS. DIAZ:· We have changed the format periodically through times just to conform with ordinances, laws; and that's what we will still continue to do.

COMMISSIONER CLARK:· What did you do prior to today?

MS. DIAZ:· We've been full nude, we've been full ·nude to now pasties with covering the genitalia with panties, full pasties.

COMMISSIONER CLARK:· You were full nude?

MS. DIAZ:· We were full nude.

*ILCC pp. 057-058.* Therefore, based on the testimony of the owner of Club O, it is clear Club O had not previously complied with the Harvey Ordinances that prohibited “live nudity” in sexually oriented businesses proving violations of the ordinances for many prior years.

There is also substantial evidence that Club O failed to disclose an operational manager during the renewal process by the renewal deadline which prevented the Harvey Commission from conducting a background check of the undisclosed manager. The Illinois Liquor Control Act requires on-site manager to possess the same qualifications that an owner or officer of a licensee. *235 ILCS 5/6-2(a)(11)*. The importance of an on-site manager qualifying for a liquor license cannot be overstated because the manager is on the front line of the sale and service of alcoholic liquor and must possess the requisite good character to ensure that the staff of the license holder sells and serves alcoholic liquor responsibly. It is clear from the record that Club O failed to disclose the on-site manager. In the disclosure of “Manager Information” on the application organizational



chart submitted with the license renewal, Club O identified Asa Powell as the manager. *ILCC p. 390*. Notwithstanding the renewal application, when pressed under testimony, the owner, Ms. Diaz, disputed that Asa Powell was the manager instead identifying Kenny Thomas as the on-site manager. *ILCC p. 033*. In fact, demonstrating a disturbing lack of knowledge and understanding of Club O business operations, Ms. Diaz could not recall Mr. Thomas' last name until she was reminded by counsel for the licensee. *ILCC pp. 037-041*. Nevertheless, the record is clear, that, even after the Harvey Commission provided two months' notice prior to the renewal deadline, and an additional month and a half prior to the renewal hearing, the owner of the business could not accurately testify to the on-site management of the business proving that Club O failed the important task of disclosing the on-site business manager on the renewal application.

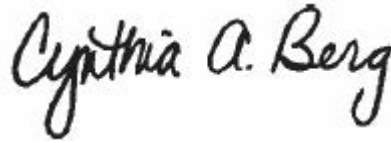
For the above stated reasons, the Harvey Commission provided evidence to prove the findings that Club O violated local ordinances nu operating a live nude sexually oriented business and by failing to accurately and timely disclose an on-site manager as required by the renewal process.

**IT IS HEREBY ORDERED:**

For the reasons stated herein, the decision of the Harvey Local Liquor Commission refusing to renew the Club O Class A liquor license is **AFFIRMED**.

Pursuant to 235 ILCS 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If no Petition for Rehearing is filed, this order will be considered the final order in this matter. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such the Petition for Rehearing is a jurisdictional prerequisite to filing an Administrative Review action.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois, on September 21, 2022.



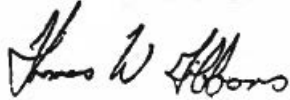
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Cynthia Berg, Chairman



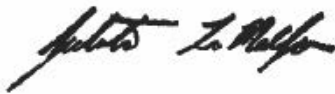
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Melody Spann Cooper, Commissioner



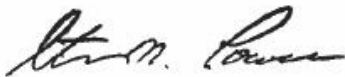
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Thomas Gibbons, Commissioner



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Julieta LaMalfa, Commissioner



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Steven Powell, Commissioner



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Brian Sullivan, Commissioner



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Patricia Pulido Sanchez, Commissioner

